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No. 960

TRANSCRIPT OF RECORD

IN THE

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

No. 16,891

UNITED STATES OF AMERICA,

Appellant,

versus

JUAN A. ORTA,

Appellee.

Appeal from the United States District Court for the Southern District of Florida

U. S. COURT OF APPEALS
FILED
NOV 18 1957
EDWARD W. WADSWORTH
CLERK

(Original Record Received October 17, 1957)

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UNITED STATES OF AMERICA,

Appellant,

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Appellee.

Appeal from the United States District Court for the Southern District of Florida

(Original Record Received—October 17, 1957)

On March 27, 1957 INDICTMENT was returned in open Court in the words and figures as follows:

[TITLE OMITTED]

INDICTMENT

The Grand Jury charges:

1. From on or about the 19th day of January, 1957,

in the Southern District of Florida, and within the jurisdiction of this Court, JUAN AUGUSTIN ORTA, the defendant herein, having duly taken an oath before a competent tribunal, to-wit: the Grand Jury of the United States of America, duly impaneled and sworn in and for the United States District Court for the Southern District of Florida, Miami Division, and inquiring for that District, in a matter then and there pending before said Grand Jury in which the law of the United States authorizes an oath to be administered, that he would testify truthfully, did unlawfully, knowingly and willfully and contrary to said oath, state a material matter which he did not believe to be true, that is to say:

2. That at the time and place aforesaid, the said Grand Jury, inquiring as aforesaid, was conducting an investigation to determine possible violations of federal statutes including, among other things: (A) violations of Title 18, U.S.C., Sections 959 and 960 forbidding persons within the United States to enlist or hire others to enlist in the service of a foreign state or people (Section 959), or to set on foot, finance or take part in any military expedition to be carried on from thence against the territory of any foreign state or people with whom the United States is at peace (Section 960), and (B) violations arising from the failure of diverse persons and organizations to comply with the registration requirements of Title 22, U.S.C., Sections 611 et seq., and Title 18, U.S.C., Section 2386, that is to say: (1) persons acting as agents of a foreign principal, to-wit: persons who act within the United States as the servants, agents or representatives for a foreign principal; persons who, within the United States, disburse, dispense or collect money, or anything of value, directly or indirectly for a foreign principal; or

persons who, within the United States, act at the order, request, or under the direction of a foreign principal, to-wit: a foreign government, a person outside the United States, or a foreign political party, including any organization or combination of individuals in a country other than the United States, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, control, or acquisition of control, of a government of a foreign country (Title 22, U.S.C., Section 611, et seq.); and (2) every organization having as a purpose or aim, the establishment, control, conduct, seizure, or overthrow of a government by the use of force, violence, military measures, or threats of any one or more of the foregoing (Title 18, U.S.C., Section 2386).

3. It was material to this investigation to ascertain whether, and to what extent, various individuals within the United States were engaging in any of the following activities, that is to say: (1) hiring or retaining persons to enlist, or to go beyond the jurisdiction of the United States with intent to be enlisted in the service of any foreign state or people; (2) beginning or setting on foot or providing or preparing a means for or furnishing the money for, or taking part in, any military or naval expedition or enterprise to be carried on against the territory or dominion of any foreign state or people with whom the United States is at peace; (3) acting as agents of a foreign principal, including arranging for and in behalf of such principal, for the hiring, enlistment or recruitment of persons within the United States and the transportation of such persons to destinations within and beyond the jurisdiction of the United States; and (4) acting for and in behalf of any individual, group or organi-

zation having any of the purposes or aims as set forth in paragraph 2 of this indictment; and to ascertain whether the defendant herein, JUAN AUGUSTIN ORTA, had knowledge of any such activities as aforesaid, on the part of any individuals and organizations; to ascertain whether the said defendant, JUAN AUGUSTIN ORTA, had participated in any such activities as aforesaid; and to ascertain whether the defendant, JUAN AUGUSTIN ORTA, did arrange within the United States for the transportation of various persons by airline from New York City to Miami, Florida, and from Miami to Ciudad Trujillo, Dominican Republic and whether the said JUAN AUGUSTIN ORTA did arrange for the transportation of any persons to and from diverse other destinations.

4. On or about the 10th day of January, 1957, and at the place aforesaid, the said JUAN AUGUSTIN ORTA, appearing as a witness under oath, testified falsely before the said Grand Jury with respect to a material matter as follows:

Q. Mr. Orta, did you arrange for the transportation of a certain number of Cubans from New York to Miami?

A. I read that in a Cuban paper. I was accused of that, but I don't know anything about that.

WHEREAS, as the said JUAN AUGUSTIN de la CARIDA ORTA y CORDOVA then and there well knew and believed, the aforesaid testimony was untrue, in violation of Title 18, U.S.C., Section 1621, in that he had arranged for the transportation of a certain number of Cubans from New York to Miami.

COUNT II

The Grand Jury realleges all of the allegations of paragraphs 1, 2 and 3 of the first count of this indictment.

2. On or about the 15th day of January, 1957, and at the place aforesaid, the said JUAN AUGUSTIN ORTA, appearing as a witness under oath, testified falsely before the said Grand Jury with respect to a material matter as follows:

Q. Now on December 7th, did you make any airline reservations for Eastern Airlines for nineteen individuals? Yes or No.
A. No.

WHEREAS, as the said JUAN AUGUSTIN de la CARIDA ORTA y CORDOVA then and there well knew and believed, the aforesaid testimony was untrue, in violation of Title 18, U.S.C., Section 1621, in that he had made airline reservations as aforesaid on the said date

COUNT III

The Grand Jury realleges all of the allegations of paragraphs 1, 2 and 3 of the first count of this indictment.

2. On or about the 11th day of January, 1957, and at the place aforesaid, the said JUAN AUGUSTIN ORTA, appearing as a witness under oath, testified falsely before the said Grand Jury with respect to a material matter as follows:

Q. Mr. Orta, were you in the Pan American

Air Lines ticket office at Flagler Street and Biscayne Boulevard on December 16, 1956?

A. I have not been there, and I would like to be permitted to add something.

* * *

A. Well, I have been at that office, but on that particular day, no.

WHEREAS, as the said JUAN AUGUSTIN de la CARIDA ORTA y CORDOVA then and there well knew and believed, the aforesaid testimony was untrue, in violation of Title 18, U.S.C., Section 1621, in that he had been in the said office on the said date.

COUNT IV

The Grand Jury realleges all of the allegations of paragraphs 1, 2 and 3 of the first count of this indictment.

2. On or about the 10th day of January, 1957, and at the place aforesaid, the said JUAN AUGUSTIN ORTA, appearing as a witness under oath, testified falsely before the said Grand Jury with respect to a material matter as follows:

Q. In the light of the statement you just made, Mr. Orta, did you visit the office of Mrs. Beulah Kaye, a ticket agent, Pan American Airlines ticket office on Flagler Street and Biscayne Boulevard where you asked for reservations for a party of twelve men?

A. Me? No. I was there at that office to take

out some passage for relatives of mine, but I don't even know who that lady is.

Q. Mr. Orta, I don't expect you to know who the lady is exactly, but were you in the Pan American Airlines office on December 9th, 1956? That was a Sunday.

A. No, sir, I was not there.

WHEREAS, as the said JUAN AUGUSTIN de la CARIDA ORTA y CORDOVA then and there well knew and believed, the aforesaid testimony was untrue, in violation of Title 18, U.S.C., Section 1621, in that he had been in the said office on the said date.

A TRUE BILL.

/s/ ALBERT M. CLARK
Foreman

/s/ O. B. CLINE, JR.
United States Attorney

On April 24, 1957 MOTION of Defendant TO DISMISS INDICTMENT was filed in the words and figures as follows:

[TITLE OMITTED]

MOTION TO DISMISS INDICTMENT

COMES NOW, the Defendant JUAN A. ORTA,

through and by his undersigned attorney and moves the Court for an order dismissing the indictment in the above and foregoing cause on the following grounds, to wit:

1. Defendants' testimony upon which the charge of perjury and indictment for same returned by the Grand Jury was based, was obtained from Defendant by the Government under undue advantage, compulsion and illegally in violation of his Constitutional rights as guaranteed by the fifth amendment and in support of the above stated Defendant will show the Court as follows:

a. That Defendant was not a voluntary witness but testified by virtue and order of a Government Sub-Poenae labelling him a witness for the Government.

b. That Defendant is a foreigner neither versed nor familiar with the English language and that at the time of testification was ignorant of the fact that by being a witness for the Government he was clothed with certain rights, immunities and priviledges among which was included the right to remain silent, right to consult an attorney and immunities in general.

c. That the failure of the Government, who well knew the above facts, to advise defendant of said rights is fatal to the indictment returned herein, as the testimony obtained from Defendant was elicited from him by virtue of the said non disclosure of his rights by the Government who thus through compulsion and undue advantage has placed the Defendant in jeopardy of his liberty in direct violation of Defendants right to immunity and to remain silent as granted by the fifth amendment.

Plaintiff further moves to dismiss the indictment on the grounds that at the time of taking of the greater part of the testimony upon which the indictment was based Defendant was not duly sworn to tell the truth as the record will reflect.

s/ GINO P. NEGRETTI
Attorney for Defendant
1109-10 Pacific Building
Tel FR 3-7880

On April 24, 1957 AFFIDAVIT OF JUAN A. ORTA was filed in the words and figures as follows:

[TITLE OMITTED]

AFFIDAVIT

BEFORE me, the undersigned authority, personally appeared JUAN A. ORTA, who after being by me duly sworn deposes and says:

1—That the Affiant is the Defendant in the above and foregoing cause of action that he has read the above motion to dismiss and that all the allegations contained therein are true.

2—That affiant does not read, write or speak the English language.

3—That affiant is unfamiliar with United States Court Procedure and with the laws, regulations and procedures of any state or administrative court or judicial body of inquiry in the United States of America and the Grand Jury system and procedure is unknown and non existing in his native land.

4—That affiant is not a citizen of the United States for he is a native and citizen of the Republic of Cuba.

5—That at the time of the taking of testimony in the Grand Jury Room he was not advised of any of his rights but advised that he had to testify and tell the truth and that at that time he had not consulted or retained an attorney.

6—That affiant was only sworn during the first day of the taking of the testimony before the Grand Jury but on subsequent occasions in which he testified he was not sworn.

7—That during all the time that he was appearing before the Grand Jury he was in fear by virtue of the manner in which the questions were proposed at him in many cases requiring that he answer by a yes or no, in fear of being accused.

8—That at that ime if he had been *apprises* of his rights he would have chosen either to remain silent or to take any immunity offered.

/s/ JUAN A. ORTA,
Affiant.

Sworn to and Subscribed before me this 24 day of April, 1957, A. D.

s/ HELEN WANICK

Notary Public, State of Florida at large. My commission expires Oct. 13, 1958. Bonded by American Surety Co. of N. Y.

On April 24, 1957 NOTICE OF HEARING was filed in the words and figures as follows:

[TITLE OMITTED]

NOTICE OF HEARING.

Please be advised that the above and foregoing Motion will be called up for hearing at the hour of 9:30 A.M. o'clock on 3d the day of May, 1957, or as soon thereafter as counsel can be heard.

s/ GINO P. NEGRETTI,
Attorney for Defendant.

CERTIFICATE

I, GINO P. NEGRETTI, attorney for the Defendant hereby certify that I have personally served a copy of the above and foregoing Motion, AFFIDAVIT in support of

Motion and Notice of Hearing on JAMES L. GUILMARTIN, United States Attorney, by delivering a copy of same at his offices this 24 day of April, 1957, A. D.

/s/ GINO P. NEGRETTI,
Attorney for Defendant.
1109 Pacific Building,
Miami, Florida.

On July 15, 1957 ORDER DENYING MOTION TO DISMISS was filed in the words and figures as follows:

[TITLE OMITTED]

ORDER DENYING MOTION TO DISMISS

This case having come to be heard on the 3rd day of May, 1957, upon the Motion To Dismiss Indictment, filed by the Defendant, Juan A. Orta, on April 24, 1957, and the Court having heard argument of counsel and the Court having further directed that the testimony given by the Defendant before the Grand Jury be transcribed and submitted to the Court, and the Court having examined the said testimony of the Defendant, it is,

ORDERED AND ADJUDGED that the said Motion To Dismiss Indictment be and the same is hereby denied, and it is,

FURTHER ORDERED AND ADJUDGED that on the Court's own Motion and order a hearing shall be held on Thursday, July 18th, 1957, at 1:30 P.M. o'clock at which

time the Defendant, Juan A. Orta, will be afforded an opportunity to present evidence upon the voluntariness of the giving of his testimony to the Grand Jury in order that this Court may determine whether that testimony should be suppressed from evidence in this or any other criminal proceeding.

DONE AND ORDERED in chambers at Miami, Florida, this 15th day of July, 1957.

s EMETT C. CHOATE
UNITED STATES DISTRICT JUDGE

On August 8, 1957 PLAINTIFF'S COMPLIANCE WITH COURT ORDER was filed in the words and figures as follows:

[TITLE OMITTED]

PLAINTIFF'S COMPLIANCE WITH COURT ORDER

Comes now the prosecution, UNITED STATES OF AMERICA, and respectfully submits the following in compliance with this Court's Order of July 15, 1957 and the oral orders of this Court of July 18, 1957.

QUESTIONS:

1. Did the defendant understand English at the time he was before the Grand Jury?

2. Was the defendant warned, outside of the

transcript of testimony, of his Constitutional right to refuse to answer questions which might tend to incriminate him?

3. Did the defendant have legal counsel prior to testifying before the Grand Jury?

4. Irrespective of legal counsel, did the defendant understand his Constitutional rights, himself?

The prosecution is not in a position to answer any of the four questions either in the affirmative or the negative, and in support of our position would submit the attached memorandum.

JAMES L. GUILMARTIN
UNITED STATES ATTORNEY

By: /s/ O. B. CLINE, JR.,
Assistant U. S. Attorney

I hereby certify that copy of the foregoing was handed to Gino P. Negretti, Esq., attorney, 1109 Pacific Building, Miami, Florida, on August 8, 1957.

/s/ LOLLIE BELLE EBERHART

On August 13, 1957 ORDER FOR HEARING was filed in the words and figures as follows:

[TITLE OMITTED]

ORDER FOR HEARING ON PENDING MOTIONS

United States Attorney
Federal Building
Miami, Florida

Gino P. Negretti
Attorney for Defendant
Pacific Building
Miami, Florida

IT IS HEREBY ORDERED that a hearing will be held before the undersigned Judge in the Federal Building, Miami, Florida, on the 20th day of August 1957, at 9:30 A. M., or as soon thereafter as counsel can be heard, on **all** pending motions filed in the above-styled cause up to and including the day of hearing.

DONE AND ORDERED in chambers at Miami, Florida, this 13th day of August, 1957.

s EMETT C. CHOATE
UNITED STATES DISTRICT JUDGE

NOTE: Attorneys are requested not to ask for any cancellations or continuances of hearings. Orders on hearings must be prepared and submitted by prevailing counsel within 48 hours after hearing.

On August 20, 1957 ORDER SUPPRESSING TESTIMONY OF DEFENDANT AND DISMISSING INDICTMENT was filed in the words and figures as follows:

[TITLE OMITTED]

ORDER SUPPRESSING TESTIMONY OF DEFENDANT AND DISMISSING INDICTMENT

This cause coming on to be heard and the Court having heard statements of witnesses under oath and argument of counsel and being otherwise fully advised, it is, thereupon,

ORDERED, ADJUDGED AND DECREED that the testimony of the defendant taken before the Grand Jury on or about January 10, 1957 is hereby suppressed and the indictment and all four counts of same are hereby dismissed.

DONE AND ORDERED at Miami, Dade County, Florida, this 20th day of August, 1957.

s/ EMETT C. CHOATE
UNITED STATES DISTRICT JUDGE

On September 18, 1957 NOTICE OF APPEAL by UNITED STATES was filed in the words and figures as follows:

[TITLE OMITTED]

NOTICE OF APPEAL

Notice is hereby given that the UNITED STATES OF AMERICA hereby appeals to the United States Court of Appeals for the First Circuit from the Order Suppressing Testimony of Defendant and Dismissing Indictment entered herein on August 20, 1957.

JAMES L. GUILMARTIN
UNITED STATES ATTORNEY

By: s O. B. CLINE, JR.
Assistant U. S. Attorney

On September 20, 1957 STIPULATION as to filing amended notice of appeal was filed in the words and figures as follows:

[TITLE OMITTED]

STIPULATION

IT IS HEREBY STIPULATED by and between counsel for the UNITED STATES OF AMERICA and counsel for JUAN A. ORTA, that the Notice of Appeal heretofore filed in this cause on September 18, 1957 wherein the United States of America stated that same was being appealed to the United States Court of Appeals for the First Circuit, be amended in that same should have read that

appeal is being made to the United States Court of Appeals for the Fifth Circuit, and counsel for JUAN A. ORTA hereby agrees that an amended Notice be filed dating back to September 18, 1957.

JAMES L. GUILMARTIN
UNITED STATES ATTORNEY

By: s/ O. B. CLINE, JR.
Assistant U. S. Attorney

s/ GINO P. NEGRETTI
Attorney for JUAN A. ORTA

On September 20, 1957 AMENDED NOTICE OF APPEAL by United States was filed in the words and figures as follows:

[TITLE OMITTED]

AMENDED NOTICE OF APPEAL

Notice is hereby given that the UNITED STATES OF AMERICA hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Order Suppressing Testimony of Defendant and Dismissing Indictment entered herein on August 20, 1957.

JAMES L. GUILMARTIN
UNITED STATES ATTORNEY

By: s/ O. B. CLINE, Jr.
O. B. Cline, Jr.
Assistant U. S. Attorney

On October 3, 1957 DESIGNATION OF CONTENTS OF RECORD ON APPEAL was filed in the words and figures as follows:

[TITLE OMITTED]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, the plaintiff-appellant hereby designates for inclusion in the record on appeal to the United States Court of Appeals for the Fifth Circuit, taken by Notice of Appeal filed herein, the following:

1. Indictment.

2. Motion to Dismiss Indictment filed April 24, 1957, and attached affidavit.

3. Notice of Hearing filed April 24, 1957.

4. Order Denying Motion to Dismiss dated July 15, 1957.

5. Plaintiff's Compliance with Court Order filed August 8, 1957, omitting an attached memorandum of law.

6. Order for Hearing on Pending Motions filed August 13, 1957.

7. Transcript of Proceedings held before U. S. District Judge Emett C. Choate on August 20, 1957.

8. Order Suppressing Testimony of Defendant and Dismissing Indictment filed August 20, 1957.

9. Notice of Appeal filed September 18, 1957.

10. Stipulation relating to Notice of Appeal of September 18, 1957.

11. Amended Notice of Appeal.

12. The following portions of the Grand Jury proceedings:

From the Grand Jury proceedings of January 9, 1957

a. (1-2) NOTE: Opening statement to grand jurors was given before Court Reporter appeared in grand jury room. However, same was dictated to reporter at conclusion of testimony of this witness, outside of the grand jury room, and is as follows:

MR. LENVIN: My name is Nathan Lenvin and I am the Chief of the Registration Section of the Internal Security Division of the Department of Justice. My main responsibility is the enforcement and administration of the Foreign Agents Registration Act of 1938, as amended, and the Voorhees Act. The Foreign Agents Registration Act requires the registration with the Attorney General of any person who acts within the United States as an agent of a foreign principal, and the Voorhees Act requires the registration with the Attorney General of an organization which advocates the overthrow of a government, not necessarily the government of the United States, by the use

of force or violence, or which advocates the use of such means for the overthrow of a government.

We have received information that there are individuals and organizations within the United States who had been acting as agents of an underground movement in Cuba and who had advocated the violent overthrow of the Batista Government in Cuba. At this time this information is not sufficiently specific to warrant a request of the grand jury for the return of an indictment, but we are anxious to conduct an investigative proceeding before this grand jury to determine exactly, if we can, what these groups and individuals have been doing within the United States which may be in violation of federal statutes. It may be that at the close of this proceeding the evidence will be sufficient to warrant submitting this matter for your consideration for the return of an indictment, but at this stage of the proceeding we are simply engaged in an exploratory procedure.

b. (p-2) Whereupon, the interpreter was called into the grand jury room and took oath as interpreter.

From the Grand Jury testimony of Juan Orta of January 10, 1957

a. (p-2) JUAN AUGUSTIN ORTA was called as a witness, and having been first duly sworn, was examined and testified as follows through the Interpreter, Louis Jordan.

b. (p-7)

Q. Mr. Orta, did you arrange for the trans-

portation of a certain number of Cubans from New York to Miami?

A. I read that in a Cuban paper. I was accused of that, but I don't know anything about that.

c. (p-8)

Q. In the light of the statement you just made, Mr. Orta, did you visit the office of Mrs. Beulah Kaye, a ticket agent, Pan American Airlines ticket office on Flagler Street and Biscayne Boulevard where you asked for reservations for a party of twelve men?

A. Me? No. I was there at that office to take out some passage for relatives of mine, but I don't even know who that lady is.

Q. Mr. Orta, I don't expect you to know who the lady is exactly, but were you in the Pan American Airlines office on December 9th, 1956? That was a Sunday.

A. No, sir, I was not there.

From the Grand Jury testimony of Juan Orta of January 11, 1957

a.(p-142) Juan Orta was recalled as a witness by the Grand Jury, and having been previously sworn, was examined and testified further, through the interpreter, Louis Jordan, as follows:

Examination by Mr. Lenvin:

Q. Would you remind the witness that he is still under oath . . .

b. (p-157, 158)

Q. Mr. Orta, were you in the Pan American Air Lines ticket office at Flagler Street and Biscayne Boulevard on December 16, 1956?

A. I have not been there, and I would like to be permitted to add something.

* * *

A. Well, I have been at that office, but on that particular day, no.

From the Grand Jury testimony of Juan Orta of January 15, 1957

a. (p-4) Juan Orta was recalled as a witness and was examined and testified as follows through the use of an interpreter.

By Mr. Lenvin:

Q. Mr. Orta, I want to remind you that you are here again under the subpoena previously served upon you and that you are still under the oath administered to you when you made your first appearance before this Grand Jury. Is that understood?

A. It is understood.

b. (p-6)

Q. Now on December 7th, did you make any airline reservations for Eastern Airlines for nineteen individuals? Yes or no.

A. No.

JAMES L. GUILMARTIN
UNITED STATES ATTORNEY

/s/ O. B. CLINE, JR.
Assistant U. S. Attorney

Post Office address:
U. S. Post Office Bldg.
Miami, Florida

I hereby certify that a true copy of the foregoing designation of contents of record on appeal was this 4th day of October, 1957, mailed to the attorney for the defendant: Gino Negretti, Esq., Pacific Building, Miami 32, Florida.

/s/ O. B. CLINE, JR.

On October 3, 1957 ORDER directing Clerk to transmit to the Clerk of the Circuit Court for the Fifth Circuit the Government's designation of the portions of the

Grand Jury proceedings specified in its Designation of Contents of Record on Appeal and filed in the words and figures as follows:

[TITLE OMITTED]

ORDER

THIS CAUSE having come on to be heard before me upon motion of the United States of America for the release of specified portions of Grand Jury proceedings as designated in the record on appeal, and the Court having examined the designation and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the Clerk of this Court transmit to the Clerk of the Circuit Court for the Fifth Circuit the Government's designation of the portions of the Grand Jury proceedings specified in its Designation of Contents of Record on Appeal.

DONE AND ORDERED at Miami, Dade County, Florida, this 4th day of October, 1957.

/s/ GEO. W. WHITEHURST
UNITED STATES DISTRICT JUDGE

On October 11, 1957 TRANSCRIPT OF PROCEEDINGS held before Judge Choate on August 20, 1957 and filed in the words and figures as follows:

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IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 10,095-M.Cr.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUAN A. ORTA,

Defendant,

Miami, Florida.
August 20, 1957.

The above entitled cause came on for hearing before the Hon. Emett C. Choate, United States District Judge, in open Court.

APPEARANCES:

O. B. Cline, Assistant United States Attorney, appearing on behalf of the Government.
Gino P. Negretti Esq., appearing on behalf of the Defendant.

- - - - - - -

Thereupon:

Mr. Negretti: Your Honor, if the Court please, we

received some responsive pleadings from the Government, and those pleadings are not in accordance with the Court's Order. The Court, on its own proper motion, ordered the Government *rp* prove certain facts. They have come up with an Answer of no knowledge as to such facts, which is, in effect, a denial that they can prove the said set of facts, and the Court very emphatically on two occasions informed the Government that if they couldn't prove the facts the Court was going to enter an Order suppressing the evidence, and dismissing it.

(Discussion off the record.)

The Court: Put your witnesses on.

(Thereupon the defendant, and all witnesses were sworn, also the interpreter, Mrs. Hilda Negretti.)

Thereupon:

JOSEPH G. ADAMS

was called as a witness on behalf of the defendant, and having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Negretti) Please state your name?
A My name is Joseph G. Adams.

Q Mr. Adams, where are you employed?
A I work at the Benner Box Factory.

Q Where is that located?
A North West 28th Street Road.

Q Do you have an employee there by the name of Juan Orta?
A Yes, sir.

Q In what capacity does he work there?
A He is working now as a wrapper.

Q As a wrapper?
A Yes.

Q How long has he worked there, more or less, if you know?
A I know it is more than a year.

Q From your own knowledge will you tell the Court in your own words what is the extent of Mr. Orta's knowledge of English, and the circumstances surrounding his working there?
A I don't believe the man knows English very well, or understands it very well, or at all. I don't know. I tried to break him in on several different jobs, and it was always difficult. I couldn't explain anything to the man without having somebody to interpret. In some cases it was really dangerous, like in operating various machines.

Q When you speak to Mr. Orta what do you have to do to convey the idea of a machine? You said he was working on a feeding machine. Please repeat that?
A I get an Instructor there with my foreman. We get a shortage of men that can feed these machines. We train some new men that we think have possibilities, and

it is my job to teach them how to operate these machines; and it was my experience in teaching Mr. Orta, — I found it very difficult to put things across to him. I mean it was very hard for him to grasp what I was trying to say. Most of the time I would have to use my hands to explain something, or something of that nature.

Q Would you care to cross examine, Mr. Cline?

CROSS EXAMINATION

Q (By Mr. Cline) Over what period of time have you had conversation with Mr. Orta, or attempted to have conversation with him?

A I would say almost daily.

Q He works five days a week. Is that correct?

A Yes.

Q Has he been steadily employed during this last year?

A I believe he has.

Q Do you recall what shift he works,—what hours?

A He works right now, 4:30 to 2 o'clock.

Q 4:30 in the afternoon?

A Yes.

Q Are there any other Spanish people working in your place, in or near Mr. Orta?

A Yes, sir.

Q About what percentage would you say?

A I'd say of our evening shift now we have about 25%.

Q Do most of them speak English as well as Spanish?

A Most of them can understand English.

Q Mr. Orta is one of the few that speaks only Spanish. Is that correct?

A No. I have heard him on some occasions try to say things in English, but I cannot understand him.

Q Do you feel that when you speak to him in English,—does he understand?

A I couldn't tell that.

Mr. Cline: No further questions.

The Court: Is it your impression that it is difficult for him to understand English; is that what I gather from your testimony?

The witness: Yes.

The Court: And that he does not understand English except when you work carefully with him over a long period, and you explain something to him?

The witness: That's right,

The Court: All right That's all.

Thereupon:

OSCAR DE RAMIREZ

was called as a witness on behalf of the defendant, and having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Negretti) Please state your name for the Court?

A Oscar De Ramirez.

Q Do you own any business in Miami?

A Yes, sir.

Q Please tell the Court what business you own in Miami?

A I am President of Ramirez Enterprises, Inc., operating the Flagler Theatre.

Q Do you own the Flagler Theatre?

A I am a Stockholder there.

Q Do you manage the Flagler Theatre?

A Yes.

Q And that Theatre is devoted entirely to Spanish Movies. Is that correct?

A Yes.

Q Have you had occasion to see Mr. Orta often in the Flagler Theatre?

A Yes.

Q In the Spanish movies?
A Yes.

Q Have you had any conversation with Mr. Orta there?
A Oh, sure.

Q Has Mr. Orta told you he only goes to Spanish movies?
A Well, I see him all the time with his wife and three kids.

Q You were served with a subpoena by the Government to appear as a Government witness in certain proceedings before the Grand Jury. Is that correct?
A Yes.

Q Who else was served with a subpoena?
A Mr. Izquierdo.

Q What was your position at the 26th July Club at that time?
A I was ex-Treasurer.

Q Who was the Treasurer at that time?
A Mr. Izquierdo.

Q Was Mr. Orta at that time a member of the 26th of July Club Miami,—on the Board of Directors?
A No, sir.

Q He was not a member?
A No.

Q Did you personally hire my services as attorney for yourself and Mr. Izquierdo and the rest of the group?

A I did.

Q Was Mr. Orta included in the hiring of my services as attorney at the time of the taking of testimony before that Grand Jury?

A No, I never talked to you about him.

Q I only represented the group from the 26th of July Club. Is that right?

A Yes.

Q And Mr. Orta was not a member of that Club. Is that right?

A Not at that time.

Q Did you hear a conversation between myself and Mr. Orta when I refused to represent him because—

A I don't remember. I heard something about that, but I don't remember.

Mr. Negretti: Would you care to enquire, sir?

CROSS EXAMINATION

Q (By Mr. Cline) Do you know of your own personal knowledge whether or not Mr. Orta had legal counsel before or during his time of giving testimony before the Grand Jury?

A Take it slow because my English is not so good.

Q Do you know whether or not Mr. Orta had con-

sulted an attorney regarding his testimony before the Grand Jury, either before or during?

A I don't.

Q You don't know?

A No. The Grand Jury met on about 10th January, 1957.

Q Do you know what type of work Mr. Orta did in Cuba?

A What dates?

Q During any dates?

A He was well known as a secretary to a fellow in '47/48.

Q Do you know whether or not Mr. Orta was a professor at the University of Havana at one time?

A I heard about it. He has a teacher's degree.

Q Do you know whether or not he taught there at any time?

A No, I don't.

Q Do you know what educational background he has?

A I *think*, as far as his education—any people who have degree supposed to have a very high education.

Q In other words, he probably would be referred to as "Doctor Orta"? Is that right,—in Cuba?

A That's right.

Q Do you know what subjects are studied to acquire that degree in Cuban Universities?

A I never went to one, and I haven't been in the High School, so I don't know.

Q You don't know of your own knowledge?

A No.

Q Do you know of your own personal knowledge whether or not Mr. Orta was told, either by an attorney or anyone else, or whether he knew of his own knowledge, before he went in to testify before the Grand Jury—

A No, I don't know.

Q Wait until I finish the question. Do you know whether or not he knew anything regarding his rights as to whether he was required to give answers to all questions that were put to him?

A I don't believe so because I was in that position myself, and I hired Mr. Negretti because I don't know all about it. That's the first time I appeared before a jury, and I didn't know what was my right. At that time he advised me to say the truth and testify.

Q Were you satisfied with the interpreter that was used,—was an interpreter used for you when you were before the Grand Jury?

A They offered me an interpreter, and I said, "Maybe I don't need one."

Q Was an interpreter present when you testified before the Grand Jury in January?

A I don't remember because they didn't use one.

Q So he wasn't in the Grand Jury room at the time you testified?

A I couldn't say that because I don't know.

Q Do you know whether or not Mr. Orta, if an oath was administered to him, would understand the oath, and understand that he was obliged to tell the truth? Do you think that if that were interpreted to him that he would understand it?

A If it was interpreted,—it is supposed to be.

Mr. Cline: No further questions.

Mr. Negretti: No further questions. We will have to use an interpreter here.

The Court: All right.

Thereupon:

JOSE GUTEIRREZ

was called as a witness on behalf of the defendant, and having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMNIATION

Q (By Mr. Negretti) Please ask him his name?

A Jose Guteirrez.

Q Please ask Dr. Guteirrez how long he has practiced law in the Republic of Cuba?

A For 40 years. Graduated 1917.

Q Please ask him if he is still practicing law—still active in the practice of law?

A Yes. He has his office at Refugio, 215, Havana, Cuba.

Q Ask him what other position he has occupied in Cuba?

A He was a Senator and Notary Public, and Mayor of one of the towns, Colon, in Cuba.

Q Ask him if the Grand Jury is known, or exists in the Republic of Cuba, in the legal system there?

A No, there are only Courts of Right in Cuba.

Q Ask him if a Grand Jury system is unknown there in law in the Republic of Cuba?

A We don't use that system in Cuba. We only have a Judge there for the trials in front of the public, and the Court of law.

Q Ask him if the whole jury system is used in Cuba?

A No.

Q Ask him who makes the accusations in Cuba?

A The District Attorney and the private lawyer they hire for that purpose.

Q Ask him this. Ask him if he, being a lawyer, would he know his rights before a Grand Jury if he was subpoenaed today in the United States?

A No. He doesn't know. He doesn't know American law.

Q Ask him if they teach at the University where he went in Cuba, any system of common law like the Grand Jury, or if they teach Spanish law or Napoleonic law, or what it is over there?

A The only laws in force in Cuba.

Q Ask him if that is derived from the Napoleonic Code,—civil law?

A Yes, the Spanish law for that.

Mr. Negretti: Would Mr. Cline like to enquire, or the Court?

Mr. Cline: No cross examination.

The Court: Ask him if there is in Cuba,—if a man has any constitutional protection against giving testimony before a public body?

A He says there is no jury in Cuba.

The Court: All right.

(Thereupon Mr. Negretti was sworn as interpreter for the next witness.)

Thereupon:

JUAN ORTA

was called as a witness on his own behalf, and having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Negretti) Mr. Orta, how long have you been in the United States?

A With residence, two years.

Q Did you ever teach at the University of Havana?

A I studied there.

Q That's not my question.

A Never.

Q Do you have a working knowledge of the English language?

A Just what I have been able to learn here. The little I have been able to learn here.

Q Now Mr. Orta, why are you still a wrapper instead of a feeder in the factory?

A Because I do not understand the orders they give me in English, and that wrapping would only need my hands. You don't need to understand English.

Q Did you retain me as an attorney for yourself to advise you as to your rights prior to the Grand Jury enquiry? The Grand Jury enquiry which was held on January 10, 1957, in Miami, Florida?

A Not you nor any lawyer. When I investigated about a citation that was translated to me, they told me I did not need a lawyer,—the person that translated it.

Q Did you know of any of your rights to remain silent when you did testify there?

A No, sir, I didn't know any of those rights. I didn't

even know what the Grand Jury was enquiring because the citation mentioned that it was against a man by the name of "John Doe".

Q Did you know if this John Doe was a defendant in the case at that time?

A He thought he was the man that was accused, and he was brought forward as a witness at that time.

The Court: Did he know that he was under investigation for an alleged criminal offense against the laws of the United States?

A Yes, the FBI and the Immigration had already investigated me other times.

The Court: Did he know the Grand Jury was investigating him?

A When I received the citation, Judge, no, but when I went into the room in accordance to the instructions, I found it was against me.

The Court: Why did he answer the questions?

A The District Attorney told me I had to answer, yes, or, no. I tried to explain, and he kept saying, "Yes, or no."

The Court: All right. That's all I want.

Mr. Negretti: You may enquire.

CROSS EXAMINATION

Q (By Mr. Cline) Ask Mr. Orta if he understood the interpreter that was used?

A Yes, I understood him, but he was not adapted to our colloquialism, and it was very hard for both of us to get together on the answers. He was not Cuban.

Q Ask him if he understood the oath that he took?

A Yes, but they told me I should tell the truth, and the whole truth, and nothing but the truth.

Q Ask him if he understands that he is present not charged with anything he had done previous to that, but is charged with not telling the truth before the Grand Jury?

A Yes, sir. Yes, sir.

Q Ask him if he had any conversation with any of the other persons summoned to appear before the Grand Jury as to what they were or were not required to do previous to going in to testify?

A I was the first or the second person that was called, and I didn't have time to talk to anyone; and furthermore, they advised us that we could not talk among each other about what was being questioned inside, not even with the lawyer, nor any other person, or tell anyone what transpired there.

Q Ask him how long a period before the Grand Jury did he receive his subpoena to appear in January?

A I don't remember, but I think it was around four or five days.

Q Ask him if he had any conversation with Mr. Dave Walters at the time he got his subpoena, and the time he appeared before the Grand Jury?

A I don't know Mr. Dave Walters. He does not

know me, and I think I have only seen him once when I was in jail back there.

Mr. Cline: No further questions.

RE-DIRECT EXAMINATION

Q (By Mr. Negretti) If you had known your rights to remain silent would you have spoken in that Grand Jury room?

A No, sir, never.

Mr. Negretti: Any questions from the Court, Your Honor?

The Court: No.

(Argument off the record.)

The Court: I will suppress the testimony, right, wrong or indifferent.

(Discussion off the record, after which the hearing was concluded.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA:
COUNTY OF DADE :

I, John Puttock, Official Court Reporter, do hereby certify that I was authorized to, and did report in shorthand, the proceedings and evidence in the before mentioned case, and that the preceding pages, numbered from 1 to and including 19, is a true and correct transcription of my shorthand notes thereof.

IN WITNESS WHEREOF I have hereunto affixed my hand this 11th day of October, 1957.

/s/ J. PUTTOCK
Official Court Reporter

United States of America,
Southern District of Florida, ss:

I, JULIAN A. BLAKE, Clerk of the United States District Court, in and for the Southern District of Florida and as the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered from 1 to 44, inclusive, contain a true, full and complete copy of all such portions of the record, proceedings, and evidence in cause styled UNITED STATES OF AMERICA -vs- JUAN A. ORTA, number 10,095-Miami-Criminal, as appear upon the records and files of my office that have been designated by written directions of the appellant to be included in this record on appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Court at Miami, Florida, on this the 11th day of October, A. D. 1957.

JULIAN A. BLAKE,

As Clerk of the United States
District Court in and for the
Southern District of Florida.

(SEAL)

By s EARLE F. SPRIGG
-Chief Deputy Clerk-

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1958

No. 960

JUAN A. ORTA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GINO P. NEGRETTI
Counsel for Petitioner
1104 Pacific Building
Miami, Florida

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1958

No._____

JUAN A. ORTA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, JUAN A. ORTA, prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on March 18, 1958.

OPINIONS BELOW

The District Court of the Southern District of Florida did not render an opinion, but entered an order suppressing the evidence and dismissing the indictment on August 20, 1957.

The opinion of the Court of Appeals for the Fifth Circuit is not officially reported but has been printed and can be cited as *U. S. v. Orta.*

JURISDICTION

The judgment of the Court of Appeals was made and entered on March 18, 1958, and copies thereof are appended to this petition on the appendix at pp. 3. The jurisdiction of this Court is invoked under Article 3, § 2, of the Constitution of the United States of America, and on 62 Statutes 928, and U.S.C.A. § 1254. On April 20, 1958, additional time to file petition for writ of certiorari was graciously granted to petitioner up to and including April 28, 1958 by virtue of an order from the Hon. Justice Hugo Black.

QUESTIONS PRESENTED

The questions presented are:

I.

WHETHER UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE, WERE PETITIONER'S RIGHTS UNDER THE FIFTH AMENDMENT INFRINGED?

II.

WHETHER UNDUE ADVANTAGE, COMPULSION, AND ILLEGALITY WERE USED BY THE GOVERNMENT IN OBTAINING AN INDICTMENT, AND, IF SO, SHOULD AN INDICTMENT SO OBTAINED STAND?

III.

WHETHER THE FIFTH CIRCUIT COURT OF APPEALS ERRONEOUSLY INTERPRETED THE RECORD, LAW, AND FACTS ON APPEAL, IN ARRIVING AT THE OPINION AND JUDGMENT RENDERED?

CONSTITUTION, STATUTES, FEDERAL RULES AND REGULATIONS INVOLVED

18 U.S.C., Sec. 959-60
Title 18, U.S.C. Sec. 2386
U. S. Code, Sec. 611
Article 3, § 2, United States Constitution
62 Statutes 928, U.S.C.A. § 1254

STATEMENT

A. THE BASIC FACTS:

JUAN A. ORTA, a Cuban national, was subpoenaed as a witness for the Government, and in that capacity testified before a Grand Jury which convened in Miami the 10th, 15th and 17th days of January, 1957. On the basis of said testimony, an indictment was returned against ORTA on March 27, 1957, by a subsequent Grand Jury (R. 1-7). On April 24, 1957, petitioner submitted a motion to dismiss the indictment, on the grounds that petitioner's testimony was obtained from him under undue advantage, compulsion and illegally (R. 8-1-a, b, c) in violation of his rights as guaranteed by the Fifth Amendment. A hearing on the motion was held on July 15, 1957, whereby the Judge, Emmet C. Choate, entered an order denying the motion to

dismiss and further ordering, on the Court's own motion, a new hearing to be held on Thursday, July 18, 1957, at 1:30 o'clock in the afternoon, at which time Petitioner was to be afforded an opportunity to present evidence as to the voluntariness of Petitioners' testimony in order that the Court could determine whether his testimony would be suppressed from evidence in that or any other criminal proceeding. Judge Choate orally told the attorneys for the government that he had read the record of the testimony of the Grand Jury and that in the record no warning as to Petitioners' rights appeared as having been made by the Government attorneys. Then counsel for the Government was requested to stipulate to the following:

1. Did the defendant understand English?

2. Was the defendant warned outside of the transcript of testimony of his Constitutional rights to refuse to answer questions which might tend to incriminate him?

3. Did the defendant have legal counsel prior to testifying before the Grand Jury?

4. Irrespective of legal counsel, did the defendant understand his Constitutional rights? (R. 12-13)

The Government complied with the Court's order by stating that they were not in a position to answer any of the questions above, either in the affirmative or the negative, and in support of their position submitted an attached memorandum (R. 14). It is noted that said memorandum has not been made a part of the record (R. 14).

At a hearing held on August 20, 1957, counsel for Pe-

titioner argued that the Government's response was not in accordance with the Court's order and that what they constituted, in effect, was a denial that they could prove the said facts (R. 28), whereupon the Court ordered the witnesses of Petitioner on the stand (R. 28) where they testified as to Petitioners' ignorance of the English language, that Petitioner had not consulted an attorney prior to giving his testimony, that Petitioner was ignorant of his right to remain silent, that Petitioner was a Government witness, that Petitioner had been previously investigated by the F.B.I., and Immigration Authorities, that the Grand Jury was investigating Petitioner, that Petitioner had studied at the University of Habana, that neither said Grand Jury system nor our system of law exists in Cuba, that Petitioner was compelled to answer the questions (R. 28, 29, 30, up to and including 48). Judge Choate, at the conclusion of this testimony, entered an order suppressing the testimony and dismissing the indictment (R. 16).

On appeal, the Fifth Circuit Court reversed the Court, basing its reversal on four main points:

1. The protection of the Fifth Amendment relates to crimes alleged to have been committed before the time when testimony was sought.

2. The mere possibility that the witness may later be indicted furnishes no basis for requiring that he be advised of his rights under the Fifth Amendment before giving testimony to a Grand Jury.

3. There was no showing that the Grand Jury before which Orta testified was seeking to indict him or any other person.

4 By being in agreement with the views expressed in *United States v. Parker* as applicable to the Orta situation.

ARGUMENT

The Court of Appeals erred in the application of the record, law and facts to the instant case.

This case is different. Orta was not an ordinary witness. He was, at the time of testimony, a foreigner unable to speak, read or write the English language (R. 28, 29, 30, 31), unfamiliar with our system of law and judicial bodies of inquiry, especially with the Grand Jury, an institution non-existent and unknown in Cuba (R. 28, 29). He was not a voluntary witness but appeared and testified under compulsion of a Government subpoena labelling him a witness for the Government. He was ignorant of any rights or privileges of witnesses before a Grand Jury (R. 40). His testimony was not rendered through himself, but second-hand through a Government interpreter with whom he could not get together on the answers, who was not Cuban and not adapted to Cuban colloquialisms (R. 42). The record reflects the above facts, and the uncontested fact that an interpreter was used for Orta speaks for itself (R. 41). Nowhere on the record appears that Orta was warned upon his oath of the consequences of uttering an untruth, or that he could be prosecuted for false statements (R. 21, 23). At no time to, or during the progress of the inquest, was Orta advised of any right to immunity that he might have had as a Government witness, or to any right to remain silent, or to the right to consult an attorney, in spite of the fact that the Government was, and is, well familiar with Orta's circumstances. On the contrary, the Petitioner

was sworn, told he had to testify and answer the questions "Yes" or "No" (R. 41). Orta was the first or second witness to testify (R. 42), he was told by the Government that he could not talk to anyone about what was being questioned inside, not even with a lawyer nor any other person, or tell anyone what transpired there (R. 42). The non-disclosure by the Government to Petitioner of his rights and privileges under the Fifth Amendment taken together with Petitioner's personal circumstance of ignorance, certainly gave the Government undue advantage over Petitioner, compelled Orta to testify, who, hearing and weighing the questions in fear and under duress, in ignorance of his right to remain silent, forced him into a cul de sac, and finding that the questions were against him and not Joe Doe (R. 41), was driven and inveigled, by the superior force of knowledge of the Government, into the classical dilemma of "either the fire or frying pan", in this case an indictment for perjury, by being forced to answer the questions propounded, not knowing he could refuse to answer.

In effect, what the Government through the non-disclosure of Petitioner's rights to him did was to actually deprive him of them, compelling Petitioner to testify as effectively as a Commissar extracts a confession by the expedient method of placing a pistol to the head of a prisoner—the one a pistol of steel, the other a pistol of knowledge—but having the same common denominator—duress.

United States v. Bell, (81 F. Rep. 830), which is still the law, has laid down a general rule which is consistent with our inherent sense of fair play in the administration of justice (81 F. Rep. 840);

"Can the Government take advantage of its own wrong, inveigle or drive or permit the citizen, too ignorant to protect himself, to take an oath, which he need not take under any compulsion, and then insist upon the pains and penalties of perjury that he shall tell the truth? Truth telling may be the highest virtue, but may the Fifth Amendment be violated to enforce it? We answer no.

"To avoid all such apprehension, it must be stated once and for all, that if a citizen fully cognizant of his privilege abandons it under compulsion or otherwise, any essays to speak under oath, before an authorized officer, he must speak the truth and may be prosecuted for perjury if he does not. At least these will be conceded for the present; but the ruling we make here is, that, before that principle can be invoked, it must appear, as it must appear in all cases of waiver and abandonment of rights, that the abandonment was knowingly and understandingly made and that no undue advantage was taken of the ignorance of the victim of inquisitorial examination in the process of the examination."

Orta could not waive any right, for you can not waive that of which you have no knowledge.

"Whether any given citizen has exercised his right to waive his privilege, and speak voluntarily subject to the pains and penalties of the statutes against perjury, depends upon the circumstances of each particular case, and upon those alone."

Orta could not waive any right, for you can not waive that which is non-existent so far as you know; and, from the circumstances of this case, in which the Government

has shown no warning, and on the contrary the testimony shows a lack of advice as to his rights to a foreign, ignorant witness. Hence, compulsion to testify under subpoena and non-disclosure of rights indicate conclusively that an undue advantage was taken of Orta, which makes it fatal for the indictment which has been procured by entrapment and duress, in abridgement of his Constitution rights by compelling him to be a witness against himself in a criminal proceeding. The Parker case, 244 F. 2d. 945, has been cited by the Government as the mainstay of their argument, which they claim is on "all fours" with the present case. In examining that case, we find that the Orta case is altogether different in that:

1. Orta has not been convicted of any crime. The Parker appeal is from a criminal conviction by a jury on first and second counts of perjury.

2. Orta was a foreigner unversed in the language in which testimony was given, not through his own media but through an interpreter. Parker was a native-born citizen, who testified through himself, and as a bail bondsman he, at least, must have had a certain degree of familiarity with Courts and Court proceedings.

3. Parker mounts an attack aimed at the evidentiary basis of his perjury conviction while Orta claims compulsion, omission and undue advantage of his ignorance by the Government.

4. In the Parker case, he came before the Appellate Court having been convicted of wilful and deliberate perjury, while Orta comes before this Court with not even a pending indictment against him.

5. In the Orta case, the inquiry was made to lay bare incriminating facts of past matters; not in the Parker case (R. 4).

6. In the Orta case, the Government was seeking to indict Orta if, in the inquiry they found that Orta had any knowledge of activities as follows: Had arranged certain transportation to and from divers destinations in violation of the Federal Statutes (R. 4), as it is the duty of the Government, if they determine said violations, or apprehend such violators, to prosecute them (R. 2). The testimony sought could be used as the basis for indictment against Orta. In the transcript of record and the Petitioner's brief, the Government and the Grand Jury disagree violently, the Grand Jury earmarks Orta as the target of the investigation (R. 4). While the Government states that they were not seeking to indict any particular person (BFA-5), but it is interesting to note that there is no assurance of what the Government told the Grand Jurors in the jury room, as the reporter was not there at that time and the Government dictated its position to the reporter outside the jury room (R. 20-a (1-2), but the indictment returned clearly earmarks Orta (R. p. 4).

In U. S. vs. Thomas, Fed. 49 Supp. 547, the rule that a witness can not be compelled to give incriminating testimony, and that such testimony secured by compulsion can not be used against witness, has no application where prosecution would be barred by statute of limitations, where witness has already received a pardon, where statute grants immunity with respect to such testimony, or where witness elects to save the privilege. Orta doesn't fall within any of the exemptions. He was not barred by the statute of limitations, he had not received a pardon,

he had not been granted immunity with regard to his testimony, and he had not waived any privilege that he did not even know existed.

None of the cases cited by the Government has the ground of Orta not being able to speak, read or write English, or even have a hazy conception of what the judicial body of inquiry powers were.

Let us examine the situation, and place ourselves in Orta's shoes. We are a foreigner in complete ignorance of the language and of the works of judicial bodies of inquiry in a foreign land, alone and stripped of any protection. Defenseless in a ring of foreigners in which we have been summoned by compulsion to testify for the Government, faced with the best legal talent available in the nation, Assistant Attorney General Tompkins, and another two attorneys from the Justice Department in Washington, D. C., we have gone to that place knowing only that that body has the power to make accusations. We don't know that we have any Constitutional rights. As the questioning progresses, we realize that we are testifying in a case against ourselves. Facing an accusation, we are cornered —and then it is only natural that any man would yield to the human temptation to sustain any wrongdoing he might have done by any false swearing.

Orta was in the situation where a man should, and would if properly advised, keep his mouth shut and defy those who would compel him to speak. By not knowing this, he fell into the pit.

To sustain such an indictment would be a grave miscarriage of justice.

The Court of Appeals erred in reversing the order of the District Court.

REASONS FOR GRANTING WRIT

Under the circumstances, facts and record of this case, the ruling below has decided an important question of Federal law, which has not been settled by this Court.

The decision below is in conflict with the decision of this Court in United States v. Bell (81 F. Rep. 830).

This Court should review this case to clarify the situation and assert its power so as to avoid a grave miscarriage of justice.

CONCLUSION

For the reasons, law and fact above stated, writ of certiorari should issue.

Jno P. Negretti

Attorney for Petitioner

APPENDIX

JUDGMENT

(Extract from the Minutes of March 18, 1958)

UNITED STATES OF AMERICA,

No. 16891, versus

JUAN A. ORTA

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by the Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this court.

PROOF OF SERVICE

I, Gino P. Negretti, as attorney for Juan A. Orta, petitioner herein, hereby certify that, on the 25th day of April, 1958, I served copies of the foregoing Petition for Writ of Certiorari to the Supreme Court of the United States on the United States, by leaving a copy thereof at the office of O. B. Cline, Esq., Assistant United States Attorney for the Southern District of Florida, Miami Division, at Room 234, Federal Building, Miami, Florida, and by mailing a copy, in a duly addressed envelope, with air mail postage prepaid, to The Solicitor General, Department of Justice, Washington 25, D. C.

Gino P. Negretti

GINO P. NEGRETTI

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16891

UNITED STATES OF AMERICA,

Appellant,

versus

JUAN A. ORTA,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(March 18, 1958.)

Before RIVES, TUTTLE and CAMERON, Circuit Judges.

RIVES, Circuit Judge: A four-count indictment was returned against Orta, each count charging the commission of perjury.[1] The several counts were based upon

[1] "§1621. *Perjury generally*

"Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and

different portions of his testimony before the United States Grand Jury at Miami, Florida on January 10, 11 and 15, 1957.[2]

Orta filed a written motion to dismiss the indictment on the ground that his testimony, alleged to be false, had been procured in derogation of his rights under the

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contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both." 18 U.S.C.A. §1621.

2 The parts of his testimony alleged to be false and perjurious were:

First Count:

"Q. Mr. Orta, did you arrange for the transportation of a certain number of Cubans from New York to Miami?
"A. I read that in a Cuban paper. I was accused of that, but I don't know anything about that."

Second Count:

"Q. Now on December 7th, did you make any airline reservations for Eastern Airlines for nineteen individuals? Yes or No.
"A. No."

Third Count:

"Q. Mr. Orta, were you in the Pan American Air Lines office at Flagler Street and Biscayne Boulevard on December 6, 1956?
"A. I have not been there, and I would like to be permitted to add something.

* * * * *

"A. Well, I have been at that office, but on that particular day, no."

Fourth Count:
"Q. In the light of the statement you just made, Mr. Orta, did you visit the office of Mrs. Beulah Kaye, a ticket agent, Pan American Airlines ticket office on Flagler Street and Biscayne Boulevard where you asked for reservations for a party of twelve men?
"A. Me? No. I was there at that office to take out some passage for relatives of mine, but I don't even know who that lady is.

"Q. Mr. Orta, I don't expect you to know who the lady is exactly, but were you in the Pan American Airlines office on December 9th, 1956? That was a Sunday.
"A. No, sir, I was not there."

Fifth Amendment.[3] In support of that motion, he alleged that he was an involuntary witness testifying under the compulsion of a subpoena; that he was a foreigner, unversed in the English language and ignorant of his constitutional rights; that the Government, though knowing of such ignorance, failed to advise him of his rights and took undue advantage of him.

The district court heard argument of counsel on the motion and then directed that the testimony given by Orta before the Grand Jury be transcribed and submitted to the court. After examining that testimony, the district court denied the motion to dismiss the indictment; but at the same time, on its own motion, ordered another hearing and requested counsel to stipulate to answers to the following questions:

> "1. Did the defendant understand English at the time he was before the Grand Jury?
> "2. Was the defendant warned, outside of the transcript of testimony, of his constitutional right to refuse to answer questions which might tend to incriminate him?
> "3. Did the defendant have legal counsel prior to testifying before the Grand Jury?
> "4. Irrespective of legal counsel, did the defendant understand his constitutional rights, himself?"

The United States attorney advised that the Government was not in position to answer any of the four questions either in the affirmative or the negative. A

[3] "* * * nor shall any person * * * be compelled in any criminal case to be a witness against himself, * * *." Amendment 5, Constitution of the United States.

hearing was held at which Orta and three witnesses testified to Orta's ignorance of his rights and unfamiliarity with the English language. At the conclusion of the hearing, the court ordered and adjudged that Orta's testimony taken before the Grand Jury be suppressed and that the indictment be dismissed. The United States appeals from that judgment.[4]

The district court did not state its findings or issue an opinion as to its reasons for suppressing the testimony and dismissing the indictment. Both parties assume that the judgment was based on the court's opinion that the appellee's rights under the Fifth Amendment had been infringed. Upon appeal, however, we think that the issues should extend to whether the judgment was proper for any reason. Rule 41(e), Federal Rules of Criminal Procedure, provides for a pretrial hearing on a motion to suppress evidence in search and seizure cases only; and several cases have held that evidence may be suppressed *prior to indictment* only in cases where constitutional rights have been violated.[5] Clearly, however, the district court might properly conduct a pretrial hearing in this case to determine the collateral issue as to whether the evidence should be suppressed because wrongfully obtained for any reason.[6]

It is clear that the protection of the Fifth Amendment relates to crimes alleged to have been committed

[4] As permitted by 18 U.S.C.A. §3731.

[5] In re Fried, 2nd Cir. 1947, 161 F. 2d 453, 465; Centrocchio v. Garrity, 1st Cir. 1952, 198 F. 2d 382, 387; Chieftain Pontiac Corp. v. Julian, 1st Cir. 1954, 209 F. 2d 657, 659; Biggs v. United States, 6th Cir., 1957, 246 F. 2d 40, 42.

[6] See cases collected in 23 C.J.S., Criminal Law, §1060 b.

before the time when the testimony is sought. A witness, ignorant and uninformed of his constitutional rights, would not intelligently waive them if he testified, thinking that he was compelled to do so.[7] He might answer truthfully and thereafter assert the constitutional guaranty.[8] Under no circumstances, however, could he commit perjury and successfully claim that the Constitution afforded him protection from prosecution for that crime. As said in *Glickstein v. United States*, 1911, 222 U.S. 139, 142: " * * * the immunity afforded by the constitutional guarantee relates to the past and does not endow the person who testifies with a license to commit perjury."

The only debatable question is one of the supervision of the conduct of Government representatives in the interest of fairness. In *United States v. Scully*, 2nd Cir. 1955, 225 F. 2d 113, 116, the Court of Appeals for the Second Circuit held:

> " * * * the mere possibility that the witness may later be indicted furnishes no basis for requiring that he be advised of his rights under the Fifth Amendment, when summoned to give testimony before a Grand Jury."

That holding is applicable to the present record. There is no showing that the Grand Jury before which Orta testified was seeking to indict him or any other person already identified. An opening statement had been made to the Grand Jurors as follows:

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7 United States v. Scully, 2nd Cir. 1955, 225 F. 2d 113, 117, n. 1 and cases there cited.

8 See United States v. Lawn, S.D. N. Y. 1953, 115 F. Supp. 671, 177.

"MR. LENVIN: My name is Nathan Lenvin and I am the Chief of the Registration Section of the Internal Security Division of the Department of Justice. My main responsibility is the enforcement and administration of the Foreign Agents Registration Act of 1938, as amended, and the Voorhees (sic) Act. The Foreign Agents Registration Act requires the registration with the Attorney General of any person who acts within the United States as an agent of a foreign principal, and the Voorhees (sic) Act requires the registration with the Attorney General of an organization which advocates the overthrow of a government, not necessarily the government of the United States, by the use of force or violence, or which advocates the use of such means for the overthrow of a government.

"We have received information that there are individuals and organizations within the United States who had been acting as agents of an underground movement in Cuba and who had advocated the violent overthrow of the Batista Government in Cuba. At this time this information is not sufficiently specific to warrant a request of the grand jury for the return of an indictment, but we are anxious to conduct an investigative proceeding before this grand jury to determine exactly, if we can, what these groups and individuals have been doing within the United States which may be in violation of federal statutes. It may be that at the close of this proceeding the evidence will be sufficient to warrant submitting this matter for your consider-

> tion for the return of an indictment, but at this stage of the proceeding we are simply engaged in an exploratory procedure."[9]

An almost identical factual situation was faced by the Seventh Circuit in *United States v. Parker*, 1957, 244 F. 2d 943, and in an able opinion by Judge Finnegan it was held that the failure to apprise the witness of his privilege against self-incrimination did not make his perjurious testimony illegally obtained evidence. The views there expressed, with which we are in full agreement, make further discussion in this case unnecessary.[10]

Perjury is one of the most elemental of all crimes. Every sane person from the beginning of time has recognized its moral iniquity. No one can fail to know that any civilized system of laws must denounce perjury because it pollutes the very fountainhead of justice.

The judgment is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED

[9] For the Foreign Agents Registration Act, see 22 U.S.C.A. §611, et seq.; for the Voorhis Act, see 18 U.S.C.A. §2386.

[10] See also, Shinyu Noro v. United States, 5th Cir. 1954, 148 F. 2d 696, 699; Claiborne v. United States, 8th Cir. 1935, 77 F. 2d 682, 690; United States v. Miller, E.D. Pa. 1948, 80 F.Supp. 979, 981; United States v. Cason, W.D. La. 1941, 39 F.Supp. 731, 734.

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In the Supreme Court of the United States

October Term, 1957

JUAN A. ORTA, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 1-7) is reported at 253 F. 2d 312.

JURISDICTION

The judgment of the Court of Appeals was entered on March 18, 1958 (Pet. 13). On April 18, 1958, Mr. Justice Black entered an order (the application for which had been filed on April 17th, within the 30-day period following the entry of the Court of Appeals' judgment) extending the time for filing a petition for a writ of certiorari to April 28, 1958,

and the petition was filed on the latter date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in the circumstances here presented, a trial for perjury before a grand jury was barred by reason of the fact that the giver of the perjured testimony had not been warned of his privilege against self-incrimination.

STATEMENT

On March 27, 1957, an indictment in four counts (R. 1-7) was returned in the United States District Court for the Southern District of Florida charging petitioner with the commission of perjury before the federal grand jury for that District. On April 24, 1957, petitioner moved to dismiss the indictment on the ground that he had not been apprised prior to his appearance before the grand jury of his right not to be compelled to give testimony against himself (R. 7-9). Following a hearing (R. 27-43), the motion to dismiss was granted by the District Court without opinion (R. 16, 43). On appeal by the Government under the Criminal Appeals Act to the Court of Appeals for the Fifth Circuit, the judgment of the District Court was reversed and the cause remanded for further proceedings (Pet. 13). The petition for a writ of certiorari seeks review of this judgment.

The pertinent facts may be summarized as follows:

Petitioner's allegedly perjurious grand jury testimony was given on January 10, 11, and 15, 1957

(R. 4, 5, 6). Prior to his being called, on January 9, 1957, the opening day of the grand jury's investigations, the following statement was made to the grand jury by the Chief of the Registration Section of the Internal Security Division of the Department of Justice, by way of explanation of the subject matter into which the Government proposed to have the grand jury inquire (R. 20-21):

> My name is Nathan Lenvin and I am the Chief of the Registration Section of the Internal Security Division of the Department of Justice. My main responsibility is the enforcement and administration of the Foreign Agents Registration Act of 1938, as amended, and the Voorhees [*sic*] Act. The Foreign Agents Registration Act requires the registration with the Attorney General of any person who acts within the United States as an agent of a foreign principal, and the Voorhees [*sic*] Act requires the registration with the Attorney General of an organization which advocates the overthrow of a government, not necessarily the government of the United States, by the use of force or violence, or which advocates the use of such means for the overthrow of a government.
>
> We have received information that there are individuals and organizations within the United States who had been acting as agents of an underground movement in Cuba and who had advocated the violent overthrow of the Batista Government in Cuba. At this time this information is not sufficiently specific to warrant a request of the grand jury for the return of an indictment, but we are anxious to conduct an investigative proceeding before this grand jury

> to determine exactly, if we can, what these groups and individuals have been doing within the United States which may be in violation of federal statutes. It may be that at the close of this proceeding the evidence will be sufficient to warrant submitting this matter for your consideration for the return of an indictment, but at this stage of the proceeding we are simply engaged in an exploratory procedure.

Petitioner's allegedly perjurious testimony consisted of his negative answers to the following questions: (1) whether he had "arrange[d] for the transportation of a certain number of Cubans from New York to Miami" (count 1, R. 4, 21-22); (2) whether he had made airline reservations with Eastern Airlines for nineteen individuals on December 7, 1956 (count 2, R. 5, 24); (3) whether he had been "in the Pan American Air Lines ticket office at Flagler Street and Biscayne Boulevard" on December 16, 1956 (count 3, R. 5-6, 23); and (4) whether he had been in the latter office on December 9, 1956 (count 4, R. 6-7, 22).

Petitioner's motion to dismiss the indictment (R. 7-9) stated that he had not appeared voluntarily before the grand jury but pursuant to subpoena; that he was a foreigner, unfamiliar with the English language; that he was unaware at the time of his appearance that he was "clothed with certain rights, immunities and priviledges [*sic*] among which was included the right to remain silent, right to consult an attorney and immunities in general"; that the Government had not advised him of his rights; and

that his testimony had been "elicited from him by virtue of the said non disclosure of his rights by the Government," which thus, through "compulsion and undue advantage," had placed him "in jeopardy of his liberty" in violation of his "right to immunity and to remain silent as granted by the fifth amendment" (R. 8). In an affidavit (R. 9-11) accompanying the motion to dismiss, petitioner stated that, had he been aware of his rights when he appeared before the grand jury, he "would have chosen either to remain silent or to take any immunity offered" (R. 10).

On July 15, 1957, the District Court, following argument of the motion to dismiss, and after examining petitioner's testimony before the grand jury (which the court had ordered transcribed and submitted to it), denied the motion, but, on its own motion, directed that a hearing be held at a later date at which petitioner would be afforded an opportunity to present evidence "upon the voluntariness of the giving of his testimony to the Grand Jury" and for the purpose of enabling the court to determine "whether that testimony should be suppressed from evidence in this or any other criminal proceeding" (R. 12-13).

Some time thereafter, government counsel were asked to supply answers to the following questions (R. 13-14):

1. Did the defendant understand English at the time he was before the Grand Jury?
2. Was the defendant warned, outside of the transcript of testimony, of his Constitutional

right to refuse to answer questions which might tend to incriminate him?

3. Did the defendant have legal counsel prior to testifying before the Grand Jury?
4. Irrespective of legal counsel, did the defendant understand his Constitutional rights, himself?

On August 8, 1957, the Government formally advised the court that it was "not in a position to answer any of the four questions either in the affirmative or the negative" (R. 13, 14).

At a hearing held on August 20, 1957 (R. 27-43), petitioner testified that he had resided in the United States for two years, having previously lived in his native Cuba (R. 40, 42); that he had attended the University of Havana in Cuba (R. 40);[1] that he had but slight knowledge of the English language (R. 40);[2] that he understood the interpreter when he testified before the grand jury, and the nature of the oath which he took to tell the whole truth and nothing but the truth (R. 41-42); that, however, he had not retained an attorney prior to his appearance before the grand jury (R. 40), and was not aware of any of his rights at that time (R. 40-41); and that if he had known of his right "to remain silent" he would not have "spoken in that Grand Jury room" (R. 43).

[1] Another witness on petitioner's behalf testified that petitioner had "a teacher's degree" from this University, and that in Cuba he would be referred to as "Doctor Orta" (R. 35).

[2] Petitioner's supervisor at his place of employment also testified to petitioner's limited command of English (R. 29-31).

At the conclusion of the hearing, the District Court (Choate, D.J.), following oral argument, indicated that he would "suppress the testimony, right, wrong or indifferent" (R. 43). On the same date, August 20, 1957, accordingly, he entered an order, without opinion, "suppress[ing]" petitioner's grand jury testimony and "dismiss[ing]" the indictment (R. 16).

On March 18, 1958, as previously indicated, the Court of Appeals, holding that this action was erroneous for the reasons set forth in an opinion filed with its judgment (Pet. App. 1-7), reversed this judgment of the District Court and remanded the cause for further proceedings "not inconsistent with" its opinion (Pet. 13).

ARGUMENT

As observed by the court below (Pet. App. 7), the factual situation and issue in the instant case are "almost identical" with the factual situation and issue in *United States* v. *Parker*, 244 F. 2d 943 (C.A. 7), certiorari denied, 355 U.S. 836. See our Brief in Opposition to the granting of certiorari in that case, No. 351, this Term, pp. 5-7. Petitioner urges here, as the petitioner urged in *Parker*, that "his prosecution for perjury was barred by reason of the fact that he was not informed of his constitutional privilege against self-incrimination at the time of his appearance before the grand jury, when, he argues, he was the unmistakable target of the investigation" (Br. in Opp., No. 351, p. 5). "To this argument"—here as there—"there are two answers: (1) petitioner was

not the target of the investigation but a witness; (2) the failure to inform him of his privilege, whatever effect such omission might have on an indictment against him with relation to the subject matter of the investigation, did not give petitioner a license to commit perjury and immunity from prosecution for perjury" (*ibid.*).

1. The record fails to show that petitioner was "the target of the investigation" of the grand jury before which he was called to testify. That investigation, as the opening statement to the grand jury by the Chief of the Justice Department's Registration Section reflects (*supra*, pp. 3-4), was a broad inquiry into activities by "individuals and organizations within the United States", about whom the Department of Justice had received information indicating that they were active in "an underground movement in Cuba" against the Batista regime, to determine whether violations of the Foreign Agents Registration Act and the Voorhis Act had occurred or were occurring. The record reflects, at most, that the Department, having reason to believe that petitioner might have pertinent information on the subject, subpoenaed him to tell what he knew. As we pointed out in our Brief in Opposition in the *Parker* case (at pp. 5-6), in *United States* v. *Scully*, 225 F. 2d 113 (C.A. 2), certiorari denied, 350 U.S. 897, the grand jury, before it called Scully to testify in connection with an investigation of frauds in government purchases, knew that Scully had ordered bids to be rigged on twenty occasions and had deposited in his bank account $4,000 more than he had earned. Even so, the

Court of Appeals, in upholding the district court's denial of Scully's motion to dismiss an indictment charging him with participation in fraud, found it far from clear that Scully had been marked for prosecution, and held (at p. 116) that—

> * * * the mere possibility that the witness may later be indicted furnishes no basis for requiring that he be advised of his rights under the Fifth Amendment, when summoned to give testimony before a Grand Jury.

The present petitioner, like Parker, was much less clearly marked for prosecution than was Scully.[3]

2. In any event, as we noted in our *Parker* brief (at p. 6), even if petitioner should have been warned, and even assuming the very debatable proposition that failure to warn a witness may be a ground for dismissing an indictment against him with relation to the subject matter of the investigation, we think it is clear that, when petitioner did undertake to testify, he had no license to commit perjury and could not

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[3]As observed by the court in *Scully*, 225 F. 2d at 116, since the grand jury "is not charged with the duty of deciding innocence or guilt," its proceedings "have never been conducted with the assiduous regard for the preservation of procedural safeguards which normally attends the ultimate trial of the issues. Thus, in such proceedings, there is no right to counsel, no right of confrontation, no right to cross-examine or to introduce evidence in rebuttal, and ordinarily no requirement that the evidence introduced be only such as would be admissible upon a trial." Cf. *Costello* v. *United States*, 350 U.S. 359.

acquire immunity from prosecution for his perjury. See authorities collected at *id.*, pp. 6-7.[4]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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Attorneys.

MAY 1958.

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[4] The early district court decision in *United States* v. *Bell*, 81 Fed. 830 (W.D. Tenn., 1897), upon which the petitioner, like the petitioner in *Parker*, relies to establish the rule that the testimony of a witness uninformed of his constitutional right may not be the basis of an indictment for perjury, has, as noted in our *Parker* brief (at p. 7), not been followed.

Petitioner, an educated man with a university degree (fn. 1, *supra*, p. 6), argues that he was prejudiced by his unfamiliarity with the English language (Pet. 6, 11). However, he admitted that he fully understood the oath which he took before the grand jury (R. 42), and the record demonstrates his ability to understand questions as propounded through an interpreter (R. 21-24, 39-43).

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